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COMMITTEE ON THE RIGHTS OF THE CHILD

Eleventh session

SUMMARY RECORD OF THE 262nd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 9 January 1996, at 3 p.m.

Chairperson: Mrs. BELEMBAOGO

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GE.96-10130 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES (agenda item 4)

Initial report of Yemen (continued) (CRC/C/8/Add.20; CRC/C.11/WP.5)

1. The CHAIRPERSON invited the Yemeni delegation to reply to the questions on the list of issues (CRC/C.11/WP.5) concerning the definition of the child and general principles.

2. Mrs. GHALEB FAREE (Yemen) noted that the Yemeni delegation was not composed only of Government representatives and that the report itself was the result of cooperation between the authorities and certain agencies working on behalf of children. For the best understanding of the context in which the Convention on the Rights of the Child was implemented, it should be borne in mind that Yemen had experienced difficult times between the war of independence and the country's unification. The unification had entailed a difficult process of integration of two completely different political systems. The situation was also complicated by the fact that Yemen had a very high proportion of children, with 54 per cent of the population under 14 years of age; that a large number of émigrés had had to come back to the country following the Gulf War; and that Yemen was currently having to adapt its infrastructure in order to become integrated into the world market economy.

3. It should also be borne in mind that, although the Yemeni authorities were determined to progress in the field of social development and had ratified the Convention on the Rights of the Child, that did not mean they could implement legislation on children that was modelled entirely on the legislation of other countries and did not take the social, traditional and cultural characteristics of Yemeni society into account. Civil law had to be based on customary and Koranic law in order to preserve the unity of the society. Despite those difficulties, positive results had been achieved in recent years, especially with regard to the early marriage of girls, since, according to a 1994 census, young women were now marrying at the age of 20 on the average. There had also been positive results in the area of literacy, since 68 per cent of the population had been illiterate 10 years earlier, as opposed to 54 per cent currently, with the rates dropping from 93 per cent to 75 per cent for women and from 70 per cent to 33 per cent for men.

4. Under Act No. 12 of 1994 on offences and penalties, a child under seven years of age at the time of the commission of an offence was not criminally responsible. If the child was under 15 years of age, the judge could order alternative penalties; if he was between 15 and 19 years of age, he would be liable to a sentence equal to half the usual sentence for an adult committing the same offence. If the death penalty was ordered against a person between 15 and 19 years of age, it would be replaced by a prison sentence of 3 to 10 years. In any event, when a child was deprived of liberty, he was placed in specialized institutions and given special treatment.

5. Compulsory schooling ended at the age of 15. A child could begin to work from the age of 16, as long as he did not work more than six hours per day or work overtime or on holidays.

6. The question of the minimum legal age for marriage without the parents' consent should be seen in the context of Yemeni society. The minimum age for marriage had not been defined by Yemeni legislation. Nothing prohibited two young people from marrying without their parents' consent, but the social pressure would be so strong that it would be hard to imagine such a possibility. Girls could not marry before the age of 15 and weddings must be public in conformity with the Muslim religion.

7. Measures had been taken to educate child domestics. Unfortunately, the parents of such children often refused to have them schooled because they did not want to be deprived of their income. Education was of course free and compulsory, but the Yemeni State did not have the means effectively to implement the law, partly because there were not enough schools and partly because the geographical distribution of the existing schools was not balanced.

8. Mr. AL-MUSIBILI (Yemen) said that the basic principles of the Convention had been embodied in national legislation and that all children could demand that they should be applied in the event of a violation of their rights. In accordance with the provisions of the Convention, the age of majority in Yemen was 18 years, at which citizens could take part in political life and vote. On the other hand, the age of criminal responsibility, the minimum legal age for marriage and the minimum age for receiving social benefits had been set at 15 years. When a child over 15 years of age committed an act contrary to the law, he was criminally responsible and punished under procedures specially designed for minors and implemented by special courts. There were also special centres intended for minors who broke the law. Those centres offered educational, health, social and psychological services to foster the minors' reintegration into society.

9. Mr. KOLOSOV said that, according to his understanding, education was compulsory from the legal point of view, but there were not enough schools and teachers in the country to make that principle a reality. He wondered how the legislator could adopt a law making education compulsory while knowing full well that the country did not have the means to implement it. In order for such a principle to be effective, the parents or authorities concerned should be punished when a child did not attend school and the child himself must be encouraged to attend. He also wondered whether the Committee could be sure that all the positive aspects of Yemeni legislation mentioned in the report were actually reflected in the life of the country.

10. Mrs. SANTOS PAIS noted that article 1 of the Convention might create confusion, since it stated that "a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier". The actual meaning of that article was that the child should be protected at least up to the age of 18, but that, since the child was also a subject of law, it was possible for him to be allowed some autonomy before the age of 18. That was why article 1 of the Convention remained relatively open. However, the Convention was quite strict on some points, especially the death penalty, which it explicitly prohibited for anyone under 18 years of age. She was somewhat concerned after reading paragraph 24 of the

report, because it appeared possible for capital punishment to be ordered for young people over 15 years of age. The Committee would be interested in receiving clarifications from the Yemeni delegation on that issue.

11. With regard to article 5 of the Civil Code, she would like to know who decided whether a person who had attained the age of 15 had the use of his mental faculties, was rational in his behaviour and was fully competent to exercise his civil rights (para. 16 of the report). Was that requirement not tantamount to restricting the area of autonomy which the Yemeni legislator seemed to wish to give children? In addition to civil majority being set at 15 years of age, under certain conditions, the fact that criminal responsibility was set at seven years of age was even more disturbing. Why introduce such young children into the criminal system, when most often they did not even know they had done wrong?

12. Was the minimum legal age for marriage 15 or was there no minimum legal age? In her view, neither boys nor girls should marry before the age of 18, for they were not yet really aware of the implications of marriage. Early marriage was also one of the main raisons why there was little likelihood of girls completing their schooling (para. 53 of the report). If the objective was to combat the perpetuation of prejudice in a society, it was important for girls to be given the same chance as boys, especially with regard to education.

13. Miss MASON noted that the setting of majority age at 15 under article 5 of the Yemeni Civil Code had been based on subjective criteria. She would like to know whether, in the time since Yemen had ratified the Convention on the Rights of the Child, research had been conducted into the question of defining the child according to the age criterion (art. 1 of the Convention), in the light of the general principle of the best interests of the child (art. 3, para. 1). Had the raising of majority age to 18 been considered? Paragraph 24 of the report seemed to indicate that it was possible for offenders from 15 to 18 years of age to receive the death penalty. Was that compatible with the best interests of the child?

14. The CHAIRPERSON said that article 5 of the Yemeni Civil Code, which set majority age at 15 under certain conditions, seemed to require some clarifications. No doubt article 1 of the Convention did provide that national legislation could set majority age at an age lower than 18; it might be wondered, however, whether a child could be as responsible as an adult at age 15.

15. Mrs. GHALEB FAREE (Yemen) said that there appeared to be some confusion between the information contained in the report and the information supplied orally by the delegation. There were three levels of legislation in Yemen: customary law, religious law and civil law (which included criminal law). Customary law and religious law permitted children to work at age 15, as might be necessary in a rural society. However, they could not do so until after the age limit for compulsory schooling. Customary law also permitted children to marry if that was in their interests, provided that either the child, his or her parents or his or her fiancé's parents were able to support the couple.

For civil law, however, childhood ended at 18 years of age. That was the age at which a person could vote, obtain a driving licence, be required to perform compulsory military service, etc.

16. Referring to question 14, on the minimum legal age for marriage without the parents' consent, she in turn asked the Committee whether freedom to marry was a right that a child should be granted. She noted that, in actual fact, the average age for marriage in Yemen had risen to 20 for girls and 25 for boys.

17. Replying to Mr. Kolosov's question, she recalled that, when the law making schooling compulsory had been promulgated, there had been only about 100 schools in Yemen. The purpose of that law had been precisely to establish the conditions for the exercise of the right to education. The Government of Yemen had built some 10,000 schools in 25 years, including 10 war years. It had reason to be proud of that record; schools had been built every day.

18. Mrs. KARP said that she would like some information on the implementation of the laws. Were customary law and religious law incorporated into civil law or were the different sets of legislation implemented separately? It was difficult to understand why there was such a diversity of provisions on majority age. Early majority resulted in freedom to participate at a young age, but also in a lack of protection. Were children over 15 years of age considered not to enjoy the protection of the Convention on the Rights of the Child? That seemed to be the case with regard to criminal law.

19. Could children go before the courts to defend their right to education if they lived in a rural area where there were no schools? Generally speaking, what were the remedies that could be exercised against the Government for violations of the rights provided for in the Convention?

20. Miss MASON said she would like to know what happened if there was a conflict between the three types of legislation (civil, religious and customary) mentioned by the delegation. Should civil majority be understood to occur at 18 years of age and religious majority at 15? Like other members of the Committee, she was concerned about the subjective criteria (para. 16 of the report) used to set majority age at 15.

21. Mrs. SANTOS PAIS said that, in her view, it was important to listen to the child, but the child's decision should not necessarily be followed in all areas. Although it was justified, for example when parents were separated, to ask the child to choose which parent should act as guardian (para. 21 of the report), the consequences of early marriage were too serious, especially for girls, who often failed to complete their schooling because of it (para. 53 of the report), for such marriages to be made easier, even if the child wanted to marry. In that area, it was more advisable to be strict. The role of the law should be to send a clear message throughout the country that no one should marry before the age of 18. The delegation had indicated an encouraging tendency for the average age of marriage to rise, but all averages covered disparities and there was nothing to guarantee that 12-year-old girls were not still being married off in remote rural regions.

22. She would like to be assured that the death penalty could not be incurred before the age of 18. She also found that the provisions of article 5 of the Civil Code paved the way for arbitrariness and discriminatory attitudes.

23. Mrs. KARP said that early marriage should not be considered as a freedom granted to children. For girls in particular, early marriage was often the result of pressure. That danger should be borne in mind.

24. Mrs. GHALEB FAREE (Yemen) said that the applicable law in Yemen was the civil law, which was based on religious considerations. There was also a customary law, i.e. customs that were not written down, but were the subject of a tacit agreement in a particular region of the country. That type of law was not compulsory either for the country as a whole or for all individuals. Nevertheless, Yemen was a rural, tribal society. Respect for customs in Yemen was most often the result of a personal desire to belong. On the other hand, the applicable civil law was the Civil Code, which was constantly being improved in the areas of labour law and criminal responsibility, for example. That was in keeping with the best interests of the child.

25. Under civil law, the minimum age for marriage was 16 for girls and 18 for boys; Yemeni legislation was perfectly in keeping with the Convention in that respect. Many NGOs were working to raise those age limits, but the laws could not be implemented instantaneously, especially in remote regions. Nevertheless, society was changing; efforts were being made to teach people of the dangers of early marriage and to bring about the best possible implementation of the international conventions. She emphasized the fact that religious, civil and customary law were not contradictory, but that civil law took precedence.

26. The CHAIRPERSON invited the Committee to consider the questions on general principles (arts. 2, 3, 6 and 12 of the Convention), covered in questions 16 to 19 of the list of issues (CRC/C.11/WP.5).

27. Mrs. KARP said that she appreciated the amendments to the Yemeni Constitution and was aware that education and time were required in order to change attitudes that were steeped in customs and religion. Legislation could help, however, and could lead to the prohibition of customs that were harmful to children. She asked the Yemeni delegation again whether a citizen could file a remedy against the Government in the courts when the children's rights covered in the Convention were not respected. She would also like clarifications on the implementation of the principle of non-discrimination. Did foreigners residing in Yemen have the same rights as Yemeni citizens? What was the situation regarding children's rights when the mother was Yemeni and the father a foreigner?

28. Mrs. SANTOS PAIS, referring to paragraph 12 of the report, which quoted article 27 of the Constitution, under which all citizens were equal in regard to their public rights and duties, asked whether foreigners residing in Yemen were treated on an equal footing with Yemeni citizens. Did Yemeni legislation explicitly recognize the principle of non-discrimination embodied in article 2 of the Convention? What steps were taken to combat discriminatory attitudes, especially with regard to little girls and child beggars or disabled children, for example in access to health care and education? Obviously, legislation

was not sufficient to eliminate such practices, but it could help bring about a change. Referring to article 3 of the Convention, she asked for clarifications on the way in which the best interests of the child were taken into account in the decisions of the various Government institutions, especially the courts. She encouraged the Yemeni Government to amend the law that set the minimum age for marriage at 15 for girls and 18 for boys, for it was contrary to the Convention. Referring to paragraph 18 of the report, she pointed out that, with regard to custody, mention was made of the rights of the guardian, but not of the best interests of the child.

29. The CHAIRPERSON suspended the meeting in order to give the Yemeni delegation time to reply to the questions relating to the general principles.

30. The meeting was suspended at 4.40 p.m. and resumed at 4.52 p.m.

31. Mrs. GHALEB FAREE (Yemen) acknowledged that there were deficiencies in Yemen with regard to studies and data on children, despite the fact that three research institutes and six University-linked institutes were working in that field. It was difficult to implement legislation immediately and automatically throughout the country, owing to deep-rooted local customs. Yemen, which was a developing society, was making efforts to modernize its institutions and building schools was considered more important than building nuclear research centres or military bases. She would like to emphasize that human rights, in particular children's rights, were given priority. In that connection, all citizens had the right to turn to the courts when their rights were flouted. On the subject of education, she referred to a case involving local authorities who, despairing of getting the State to build a two-classroom school in their region, had taken the case to the Parliament, which had discussed the matter and decided to build six extra classrooms. The best interests of the child were not primarily defended in Parliament, but many other Government institutions did so.

32. Boys and girls had equal rights and school was compulsory for all children for nine years. Nevertheless, sociological factors and some customs could result in differences of treatment. For example, some classes were occasionally reserved for girls. Owing to various traditions, girls did not always receive the same treatment as boys and the Government should take steps to ensure the full implementation of the law.

33. It was possible for children born to a Yemeni mother and foreign father to receive their mother's nationality, although in principle it was the father's nationality that took precedence. If there was a conflict with the father, custody was given to the mother, in accordance with religion, customs and civil law. When the mother married another man or if she died, the maternal grandmother took over the child's care.

34. Regarding early marriage, she stressed that girls were tending to marry later and that customs were changing. In that connection, the Government encouraged girls to marry after the age of 18. She added that it was often religion that pushed boys and girls towards marriage by prohibiting premarital sex. The Government felt that it was in the children's interests for their

parents to be married. She welcomed the dialogue of the Yemeni delegation with the Committee, for it would make it possible to improve the implementation of the Convention in Yemen.

35. Mr. AL-MUSIBILI (Yemen), referring to the situation of children under criminal law, explained that article 31 of the Penal Code provided that children under seven years of age were not responsible for any offences they committed. In the case of children from seven to 14 years of age, judges applied the provisions of the Minors' Code. Every effort was also made to reintegrate the child into society. If the offender was between 15 and 18 years of age, he was liable to a penalty equivalent to half the penalty applicable to an adult. For crimes which carried the death penalty if committed by an adult, a minor was sentenced to a prison term of 3 to 10 years, and was not held in a prison for adults. Foreigners residing in Yemen had the same rights as Yemeni citizens, especially with regard to health care and education. Regarding question 16, he stressed that the law prohibited all discrimination based on sex. In reply to question 17, he said that all inhabitants of Yemen had the same rights and duties. The refugees from the Horn of Africa received all the care they needed, in conformity with the 1951 Convention relating to the Status of Refugees. He noted that UNHCR had congratulated the Yemeni Government on the way in which it treated its refugees, including refugee children.

36. Mrs. EUFEMIO said she would like clarifications concerning the principles of non-discrimination and the best interests of the child. According to a source available to her, article 40 of Act No. 20 of 1992 relating to personal status stipulated that women must obey their husbands and perform housework and could not leave the home without their husbands' permission. Since girls were educated along those lines, that situation ran the risk of perpetuating itself. It also seemed that most parents in Yemen preferred to have boys rather than girls. Was that not discrimination?

37. Mrs. SANTOS PAIS said she would like to know whether Yemeni legislation actually prohibited all discrimination based on any of the criteria set forth in article 2 of the Convention on the Rights of the Child. Although she acknowledged the importance of the law in that area, she noted that, on a practical level, discriminatory attitudes might persist. She referred in that connection to the numerous examples cited in the report, which indicated that attitudes towards certain children, such as children living in rural areas, disabled children or girl children were different. That situation should be emphasized and the Yemeni authorities should be encouraged to redress it, and especially to guarantee the same educational opportunities to all children, whether girls or boys. She hoped that the Yemeni State would put its dialogue with the Committee to good use by considering taking steps to solve that problem.

38. Miss MASON requested the Yemeni delegation to indicate once again how the principle of respect for the views of the child was taken into account in the family and in judicial and administrative procedures. She would also like to know why the principle of non-discrimination had been replaced in the Constitution by the much broader principle of equality. Noting that, according to the Yemeni delegation's replies, extramarital relations did not exist in Yemen or were immediately legitimized by a marriage, she concluded

that the issue of illegitimate children did not arise in Yemen and that there was no need to consider it. According to the Yemeni delegation, the legislator had not paid particular attention to the principle of the best interests of the child and she therefore asked whether the provisions of the Convention were properly understood in Yemeni society. With regard to girls' education, she did not question the tradition of separating boys from girls in schools, but noted that schools should also be provided for girls on the same basis as for boys. She asked whether consideration had been given to appealing to tribal chiefs and religious leaders, who had a strong influence over the behaviour of the population in general, in order to change attitudes, especially in rural areas.

39. Mrs. GHALEB FAREE (Yemen) noted that the deeply-rooted traditions in Yemen were evolving, but that time was needed before real changes would be seen in the society. It was necessary to know the history of Yemen in order to understand the situation. With regard to school attendance by girls, for example, it was necessary to know that, before the revolution, it had been considered that girls should not attend school, for that would affect their morals and undermine traditions. When modern education had been introduced in Yemen, the weight of tradition had made many families hesitate to send their girls to school, and that was why there were few girls in comparison with the number of boys attending school. The authorities had tried to encourage the tribal chiefs to send their girls to school and thus influence the rest of the population. But some chiefs did not see the need to do so and the Government had no influence over them, since the tribal chiefs were elected by the local population and not appointed by the Government. The distinctions that had been noted were thus not the result of law or Government policy, but of the situation as it had stood before the proclamation of the Republic.

40. She acknowledged that the husband was the head of the family in Yemeni society and had the predominant role, but that role in no way stifled the wife's personality. Yemeni women could now ask for a divorce. When a conflict broke out between two tribes, a woman who lost her husband received 11 types of compensation and, if she was killed, the tribe responsible for her death was considered to be deeply shamed. In some areas of the country, parents preferred to have girls rather than boys for economic reasons: boys were expensive to educate and marry off. In other areas, especially the mountain areas, parents preferred boys because boys could do work requiring strength. It could therefore not be categorically stated that everything worked in favour of boys or of girls. The conditions that prevailed in a particular region of the country were what determined customs and attitudes.

41. The difference between the number of boys' schools and the number of girls' schools was the result not of discrimination, but of tradition. It should, however, be emphasized that some schools were open to boys in the morning and to girls in the afternoon, for example, and that made for the best possible use of facilities and avoided the need to build two schools. She acknowledged that the quality of education in the cities and the countryside was not the same, but emphasized that the authorities were making efforts to provide schools, clinics and other basic services in all villages. She noted that the rate of illiteracy among girls had been constantly declining in recent years thanks to the literacy and school enrolment campaigns.

Nevertheless, in view of the demographic growth, the State feared a further rise in the illiteracy rate, for it did not have the means to set up new infrastructures.

42. Replying to the question relating to respect for the views of the child, she indicated that a child could prosecute anyone who had harmed him physically or emotionally. There was no discrimination against children in the family, whether in urban or in rural areas.

43. Mrs. KARP said that it was the duty of all States parties to the Convention to combat all forms of discrimination, including those deriving from traditions. She acknowledged that legislation in that area was not sufficient and that attitudes must be changed through education. In that connection, she believed that mixed schools could help change attitudes in the long term; she would therefore like to know whether the establishment of separate schools for boys and girls was a matter of principle or whether the authorities had some flexibility in that area. She would also like to be told the Government's attitude towards the practice of killing girls or women who had sexual relations outside of marriage. Was such an act regarded as murder or was it accepted as a custom?

44. Mrs. SANTOS PAIS said that it was not enough for the law to prohibit discrimination: efforts must also be made to enforce the law and raise public awareness of the problem. Turning to the questions on civil rights and freedoms and the family environment, she asked whether failure to possess a birth certificate was an obstacle to attending school. She would also like some explanations of the principle whereby custody of the child could not be withdrawn from a mother on grounds of immoral behaviour before the minor had reached the age of five. She noted that the first five years of life were very important and that the parents' moral characteristics had a decisive influence during that period.

The meeting rose at 6 p.m.